

D/F

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOHN R. DURSO, DEBRA SERVIDO,  
ARTHUR CARAWAY, JEFERY LAUB,  
MURRAY J. MORRISSEY, JON GREENFIELD,  
JOHN CATSIMATIDES, MORTON SLOAN, and  
ANGELO AVENA, as Trustees fiduciaries of LOCAL  
338 RETIREMENT FUND,

Plaintiffs,

-against-

MILL BASIN MEAT CORP.,

Defendant.

-----X  
NICHOLAS G. GARAUFIS, United States District Judge.

Before the court is an amended report and recommendation ("Am. R&R") (Docket Entry # 16) prepared by Magistrate Judge Cheryl L. Pollak in response to the court's referral of this case to her for an inquest on damages. The Am. R&R is ADOPTED.

By memorandum and order dated August 4, 2011, the court granted the plaintiffs' motion for default judgment in this ERISA action, and referred the case to then Magistrate Judge Andrew J. Carter, Jr. for a report and recommendation on the issue of damages. (See Docket Entry # 9.) When Judge Carter was appointed to the United States District Court for the Southern District of New York, the case was reassigned to Judge Pollak (see Docket Entry dated Dec. 9, 2011), and she filed a report and recommendation on March 2, 2012 (see Docket Entry # 14). The plaintiffs objected on the grounds that there was a computational error in the report and recommendation (see Docket Entry # 15), and Judge Pollak filed the Am. R&R on March 8, 2012.

**FILED**  
IN CLERK'S OFFICE  
U S DISTRICT COURT E.D.N.Y.

★ MAR 30 2012 ★

BROOKLYN OFFICE

**ORDER**

**10-CV-6036 (NGG) (CLP)**

No party has objected to the Am. R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). Accordingly, the court reviews the Am. R&R for clear error. See La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at \*1 (E.D.N.Y. Mar. 15, 2010).

The court has reviewed the Am. R&R for clear error and, finding none, ADOPTS the Am. R&R in its entirety. For the reasons set forth in Judge Pollak's original report and recommendation, the court ORDERS that the plaintiffs are awarded \$1,125,068.76, representing: (1) \$621,721.00 in unpaid withdrawal liability; (2) \$246,201.12 in interest on the unpaid amount to the date of the Am. R&R; (3) \$246,201.12 in liquidated damages; (4) \$10,060.00 in attorneys' fees; and (5) \$885.52 in costs. The plaintiffs are also awarded additional pre-judgment interest, covering the amount of time between the filing of the Am. R&R on March 8, 2012, and entry of final judgment, and post-judgment interest pursuant to 28 U.S.C. § 1961.

SO ORDERED.

Dated: Brooklyn, New York  
March 30, 2012

s/Nicholas G. Garaufis  
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NICHOLAS G. GARAUFIS  
United States District Judge